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**OPINION OF THE PUBLIC ACCESS COUNSELOR**

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STEPHANIE L. ZEPELIN,  
*Complainant,*

v.

CITY OF MUNCIE,  
*Respondent.*

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Formal Complaint No.  
19-FC-83

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Luke H. Britt  
Public Access Counselor

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BRITT, opinion of the Counselor:

This advisory opinion is in response to a formal complaint alleging the City of Muncie violated the Access to Public Records Act.<sup>1</sup> Attorney Karen Arland filed an answer to the complaint on behalf of the city. In accordance with Indiana Code § 5-14-5-10, I issue the following opinion to the formal complaint received by the Office of the Public Access Counselor on September 10, 2019.

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<sup>1</sup> Ind. Code § 5-14-3-1 to 10.

## **BACKGROUND**

This case involves a dispute over access to law enforcement recordings depicting interactions between Muncie Police and three individuals.

On May 7, 2019, Stephanie Zepelin (“Complainant”) filed a public records request with the City of Muncie seeking the following:

All video recordings of Muncie Police Interactions with Lonnie E. Gannom from 2017 to present

Any documents related to Lonnie E. Gannom and the Muncie Police Department’s use of force from 2017 to present

All video recordings of Muncie Police interactions with Emanuel Montero from 2017 to present

Any documents related to Emanuel Montero and the Muncie Police Department’s use of force from 2017- present

All video recordings of Muncie Police interactions with Jessie Vernon from 2017 to present

Any documents related to Jessie Vernon and the Muncie Police Department’s use of force from 2017- present

On June 19, 2019, Muncie denied Zepelin’s request. Essentially, Muncie asserted that Zepelin’s request lacked reasonable particularity and she failed to meet the definition of “requestor” as defined by the Access to Public Records Act.

Muncie invited Zepelin to narrow the timeframe of her request and to provide additional search terms or descriptions of the documents she wants.

On August 22, 2019, Zepelin filed a new request with Muncie seeking the following:

All video recordings of Muncie Police interactions with Lonnie E. Gannom from February and March 2017 & April, May, and June 2018;

Any documents related to Lonnie E. Gannom and the Muncie Police Department's use of force from incidents in February and March 2017 & April, May, and June 2018;

All video recordings of Muncie Police interactions with Emanuel Montero from January and February 2019;

Any documents related to Emanuel Montero and the Muncie Police Department's use of force from January and February 2019;

All video recordings of Muncie Police interactions with Jessie Vernon from May and June 2018;

Any documents related to Jessie Vernon and the Muncie Police Department's use of force from May and June 2018

Muncie again denied Zepelin's request for the same reasons stated in the original denial.

As a result, Zepelin filed a formal complaint with this office on September 10, 2019 alleging Muncie's denial of her requests violates the Access to Public Records Act.

Muncie disputes Zepelin's complaint of an APRA violation.

First, Muncie argues that Zepelin's requests to inspect law enforcement recordings are not reasonably particular in accordance with Indiana Code section 5-14-3-3(i).

Second, Muncie asserts that Zepelin has not indicated or shown that she meets the definition of "requestor" under Indiana Code section 5-14-3-5.1.

Finally, with regard to the portions of Zepelin's requests seeking any documents related to MPD's use of force involving the three named individuals, Muncie argues the "any document" language lacks reasonable particularity.

In addition, the city contends the request may encompass investigatory records, personnel files of public employees, and records specifically prepared for discussion or developed during discussion in an executive session under Indiana Code section 5-14-1.5-6.1. The City maintains that it has discretion to deny access of these records in accordance with Indiana Code sections 5-14-3-4(b)(1), (b)(8), and (b)(12).

## ANALYSIS

The case presents, among other things, the issue of reasonable particularity in the context of law enforcement recordings and in general requests for records.

### **1. The Access to Public Records Act ("APRA")**

It is the public policy of the State of Indiana that all persons are entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. Ind. Code § 5-14-3-1.5-1.

The Access to Public Records Act (“APRA”) states that “(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information.” *Id.* The City of Muncie is a public agency for the purposes of APRA; and thus, subject to the act’s requirements. Ind. Code § 5-14-3-2(n). Unless otherwise provided by statute, any person may inspect and copy the city’s public records during regular business hours. Ind. Code § 5-14-3-3(a).

## **2. Reasonable Particularity**

### **2.1 Generally**

Under APRA, every request for public records “must identify with reasonable particularity the record being requested.” Ind. Code § 5-14-3-3(a).

The City asserts the request for “any documents” related to use of force is not reasonably particular. In most cases, this would seem to be the case. There could be any number of documents related to use of force within a law enforcement agency be it from internal affairs, administration or simply an officer narrative. Asking a requester to drill down to seek a particular type of record is normally not out of bounds.

This office, however, maintains a healthy skepticism about agencies that argue a request is just too vague to fulfill while simultaneously citing the statutory exceptions that shield the records from disclosure. It’s a false dilemma that erodes the integrity the first argument.

So too is the case here. If Muncie knows enough to know the records requested by Zepelin may be subject to the various disclosure exceptions noted in its response, then her request likely does not lack reasonable particularity.

## **2.2 Requests for Law Enforcement Recordings**

As far as the law enforcement recordings, again, technically the City is correct in that Indiana Code section 5-14-3-3(i) defines what reasonable particularity is in the context of requests to inspect or copy a law enforcement recording.<sup>2</sup>

A request describes a law enforcement recording with reasonable particularity only if the request provides the following information:

- (1) The date and approximate time of the law enforcement activity.
- (2) The specific location where the law enforcement activity occurred.
- (3) The name of at least one (1) individual, other than a law enforcement officer, who was directly involved in the law enforcement activity.

Ind. Code § 5-14-3-3(i)(1), to -(3). Here, Zepelin requests all of the MPD's recordings of the department's interactions

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<sup>2</sup> "Law enforcement recording" means an audio, visual, or audiovisual recording of a law enforcement activity captured by a camera or other device that is: (1) provided to or used by a law enforcement officer in the scope of the officer's duties; and (2) designed to be worn by a law enforcement officer or attached to the vehicle or transportation of a law enforcement officer. Ind. Code § 5-14-3-2(k).

with three specific individuals during certain months and years.

Muncie argues that Zepelin's request does not comply with the statute governing reasonable particularity in the context of law enforcement recordings because the request does not include specific dates, locations, or other information required by the statute.

Based on the information presented and the plain language of the statute, this office must agree that Zepelin's requests for law enforcement recordings are not reasonably particular.

Here, Zepelin's requests do not include the date and approximate time or the specific location of the law enforcement activity. This information is required under subsections (1) and (2). The statute says a request describes a law enforcement recording with reasonable particularity *only if* the request provides the listed information.

But back to the false dilemma asserted by the City, it knows the footage sought – actually offering do disclose some of it. The City must rely on an alternative exemption if it seeks to withhold it.

To its credit, the City does cite public safety concerns for withholding one of the three recordings. Likely interference with the ability of a person to receive a fair trial is an exemption to disclosure pursuant to Indiana Code section 5-14-3-5.2(b)(2).

The recordings for the other two individuals – whose charges have been dropped – therefore have been made available.

### **3. Copy Fee for a Law Enforcement Recording**

Toward that end, the City has agreed to provide two of the three recordings requested, but at a cost. Indiana Code section 5-14-3-8(g)(1) allows an agency to charge direct cost of providing a copy of a law enforcement recording so long as the fee does not exceed \$150.

As it pertains to an existing body worn camera program, direct cost is defined as 105% of the sum of the cost of the labor required to retrieve the footage and the medium for transmission (e.g., thumb drive, disc, etc.). *See* Ind. Code § 5-14-3-2(d).

Not all body worn camera footage will meet that \$150 limit. It is meant to be a cap and not an automatic flat fee. For example, a thirty second interaction with no redaction will not cost \$150 in labor to produce and transmit.

Undoubtedly, some footage's production cost will meet that benchmark if it is a long piece of footage. Indiana Code section 5-14-3-5.2(e) lists several types of depictions that must be blurred or redacted from a recording. This would necessitate officer or administrative review and perhaps labor to manipulate software in order to obscure.

Without the benefit of reviewing the footage, this office cannot make a conclusive determination, but it bears mentioning that not all law enforcement recordings should be charged at the maximum rate.



## CONCLUSION

Based on the foregoing, it is the opinion of this office that the City of Muncie should reevaluate its denial of the documentation associated with the identified events and reconsider its fee charge for the law enforcement recordings to ensure the cost is commensurate with Indiana Code.

A handwritten signature in black ink, appearing to read 'LH Britt', with a large, sweeping flourish at the end.

Luke H. Britt  
Public Access Counselor